TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~375~~ 101.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE PAINE LUMBER COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED AUGUST 18, 1905.

(19877.)

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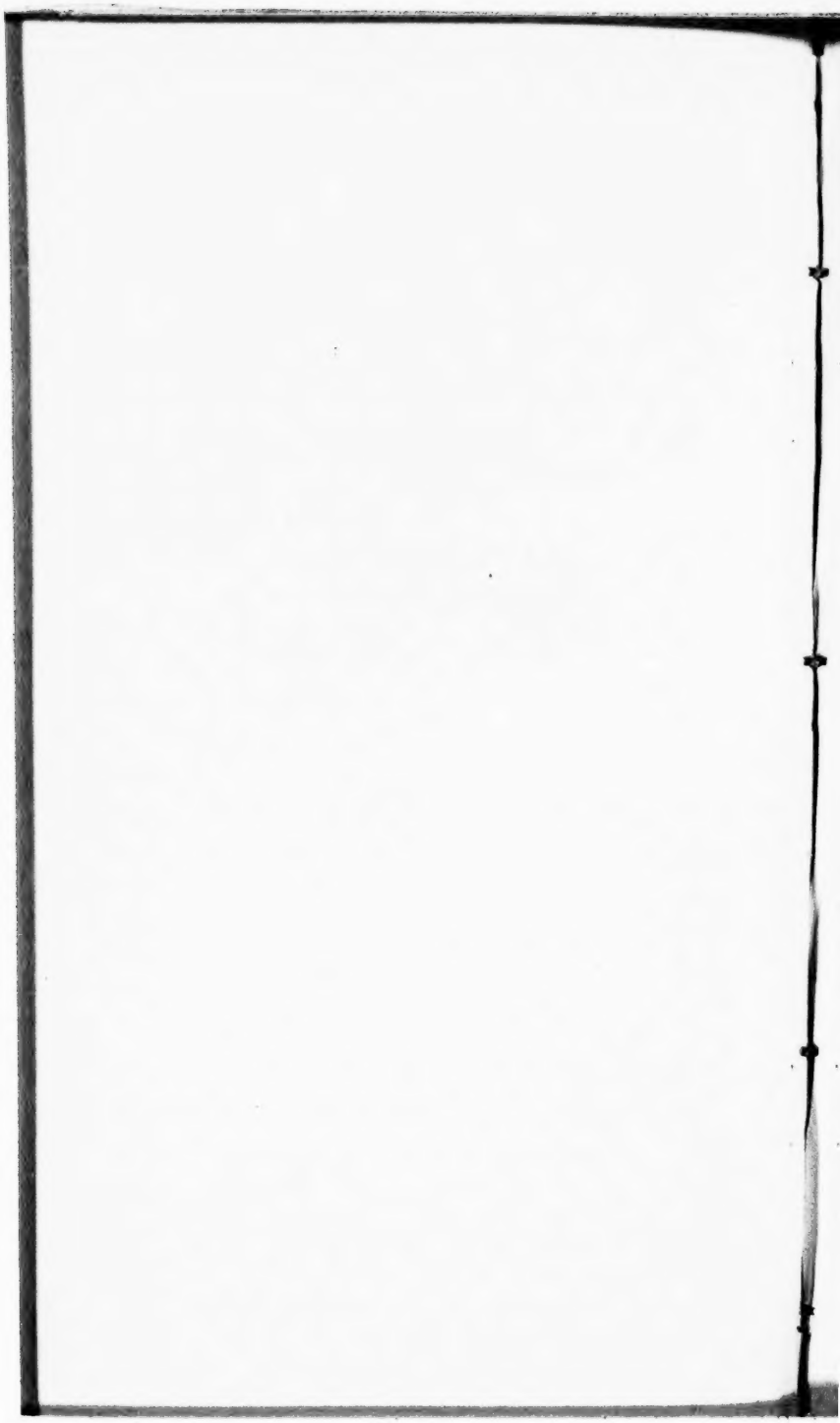

1 Circuit Court of the United States for the Eastern District of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the Circuit Court of the United States for the Eastern District of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the first Monday (being the third day) of October, A. D. 1904.

Present: The Honorable William H. Seaman, district judge, presiding.

Among other the following procedings were had, to wit:

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT. } At law.

Be it remembered that heretofore, to wit, on the 28th day of January, A. D. 1902, came the U. S. district attorney and filed his præcipe for a summons against the above-named defendant, together with a complaint to be served; which præcipe for a summons is as follows:

Præcipe.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

Let a summons issue in the above-entitled action. Complaint transmitted herewith to be served with the summons.

Dated January 28, 1902.

(Signed) H. K. BUTTERFIELD,
United States Attorney, Plaintiff's Atty.

To EDWARD KURTZ, Esq.,
Clerk of said Court.

2 Whereupon a summons issued according to law with said complaint annexed, which are as follows:

Summons.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.
[L. S.]

The President of the United States of America to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-

entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

The marshal of said district is hereby commanded to serve this summons, and make due return thereto.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the Eastern District of Wisconsin, this 28th day of January, in the year of our Lord one thousand nine hundred and two, and of the independence of the United States the 126th.

(Signed) EDWARD KURTZ, *Clerk.*

H. K. BUTTERFIELD, *U. S. Attorney,*
P. O. address, Milwaukee, Wis.

3 *Complaint.*

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

The plaintiff, the United States of America, by H. K. Butterfield, its attorney, complains of the above-named defendant and alleges as its cause of action herein:

That the defendant, the Paine Lumber Company, is and was at all of the times hereinafter mentioned a corporation duly organized and existing within said district under and by virtue of the laws of the State of Wisconsin, and doing business as such within said State;

That upon information and belief, before and at the times hereinafter mentioned, the plaintiff was the owner and entitled to the immediate possession of a quantity of timber and logs, to wit, 7,500 ft. of basswood; 6,500 ft. of elm; 51,020 ft. of pine logs, which said logs were unlawfully cut and removed from the following described lands situated within the Eastern District of Wisconsin, to wit, the east half of the northwest quarter of section No. 35, in township No. 28, north of range 14, east of fourth principal meridian, and the northeast quarter of the southwest quarter of section 21 in said township;

That the plaintiff was during all the times hereinafter mentioned the lawful owner of said described real estate and entitled to the possession of all timber cut therefrom, or the product thereof.

2. That between the first day of January and the first day of April, A. D. 1899, at the county of Shawano, Wisconsin, within said
4 district, the defendant being then and there in possession of said logs, the said property of this plaintiff, unlawfully converted and disposed of the same to its own use and benefit, to the plaintiff's damage $536; and plaintiff alleges, upon information and belief, that the plaintiff necessarily incurred and actually expended the sum of $15.14 in ascertaining the extent of said trespass and measuring and scaling and arriving at the quantity of timber and logs converted by defendant and so unlawfully taken from said lands as hereinbefore alleged; and that defendant is liable to said plaintiff for the amount thereof.

Wherefore plaintiff demands judgment against the defendant for the sum of $551.14 (five hundred and fifty-one and fourteen one-hundredths dollars) damages, with interest thereon as provided by law, and the costs and disbursements of this action.

(Signed) H. K. BUTTERFIELD,
United States Attorney for the Eastern District of Wisconsin,
Plaintiff's Atty.

STATE OF WISCONSIN,
Milwaukee County, ss:

H. K. Butterfield, being duly sworn, on oath says that he is the United States attorney in and for the Eastern District of Wisconsin and as such officer appears as attorney for the plaintiff herein and makes this verification as such officer and attorney; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; that his knowledge and the grounds of his belief are derived from statements of the officers of the General Land Office of the United States and official reports made therein in deponent's possession concerning the material facts herein set forth.

(Signed) H. K. BUTTERFIELD.

Subscribed and sworn to before me this 28th day of January, 1902.
EDWARD KURTZ, *Clerk.*

5 Summons and complaint returned: Served on the within-named Paine Lumber Company by showing A. B. Ideson, secretary of said company, this summons and complaint and delivering to him personally a copy thereof this third day of February, A. D. 1902.
Fees, $6.86.

(Signed) THOS. B. REID, *Marshal.*

MARCH 31, 1902.

This day came the defendant by its attorneys, Messrs. Thompsons, Hollister & Pinkerton, and filed its answer, as follows:

Answer.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

And now comes the defendant, the Paine Lumber Company (Limited) sued herein as the Paine Lumber Company, by Thompsons, Hollister & Pinkerton, its attorneys, and for answer to the plaintiff's complaint herein alleges and says:

1. The defendant denies each and every allegation, matter, and thing set forth or alleged in said complaint, except such as are hereinafter admitted.

2. The defendant admits that at all the times in said complaint mentioned it was and is a corporation duly organized and existing within the Eastern District of Wisconsin, under and by virtue of the laws of the State of Wisconsin, and doing business as such within said State, and that its correct and true corporate name was and is the Paine Lumber Company (Limited).

6 3. The defendant denies that it has any knowledge or information sufficient to form a belief as to whether or not the plaintiff was or is the owner of or entitled to the possession of the timber and logs in said complaint mentioned or any part thereof, or as to whether or not the same were unlawfully or otherwise cut or removed from the lands in said complaint described or from any part thereof, and therefore this defendant denies the said allegations of the complaint in that regard and the whole thereof.

4. The defendant denies that it has any knowledge or information sufficient to form a belief as to whether or not the plaintiff, at the times in the complaint mentioned, was or now is the owner of said real estate or entitled to the possession of timber cut thereon or the product thereof or any part thereof, and therefore denies the allegations of the complaint in that regard and the whole thereof.

5. And this defendant, further answering, denies that it ever unlawfully converted or disposed of the said logs or timber or any part thereof, or that it ever had possession thereof or of any part thereof, except as hereinafter stated, and the defendant denies that the plaintiff has in any way been damaged or injured by the acts or doings of this defendant.

6. The defendant denies that it has any knowledge or information sufficient to form a belief as to whether or not the plaintiff incurred or expended the sum of fifteen dollars and fourteen cents ($15.14) or any sum whatsoever in ascertaining the extent of the trespasses alleged in said complaint, or in measuring and scaling and arriving at the quantity of timber and logs alleged in the complaint to have been converted by this defendant or for any of said purposes whatsoever, and therefore denies the allegations of the complaint in that regard and the whole

7 thereof, and the defendant denies that the defendant is liable to the plaintiff for any sum or sums whatsoever.

7. The defendant, further answering, admits and alleges, that during the fore part of the year 1899, at the county of Shawano, in the Eastern District of the State of Wisconsin, it in good faith bought and purchased of one Thomas Gardner the amount of basswood logs mentioned in the complaint board measure and three thousand three hundred and ninety feet board measure of elm logs, which said logs were at said time landed on the banks of Weed's Pond, in the said county of Shawano; that the said basswood logs were then and there of the value of five dollars and twenty-five cents ($5.25) per thousand feet board measure, and the said elm logs were then and there of the value of four dollars and fifty cents ($4.50) per thousand feet board measure, and that said basswood logs and said elm logs were then and there at said place in the possession of said Thomas Gardner, who then and there claimed and represented himself to be the sole and absolute owner thereof and entitled to sell the same and collect therefor for his own use and benefit, and this defendant purchased and bought said basswood and elm logs of him at said time

and place in good faith and for value, believing him to be the bona fide and absolute owner thereof and entitled to sell the same, and receive the proceeds thereof for his own use and benefit, and the defendant then and there paid him for said basswood and elm logs the full value thereof, to wit: The sum of five dollars and twenty-five cents ($5.25) for each thousand feet board measure of said basswood logs, and the sum of four dollars and fifty cents ($4.50) per thousand feet board measure for said elm logs, and that thereafter in the regular course of its business the defendant sold and disposed of said basswood and elm logs, and that, as this defendant is informed and believes, they are the same
8 basswood and elm logs and timber claimed by the plaintiff in its complaint herein to have been its property.

8. This defendant, further answering, admits and alleges, that during the early part of the year 1899, at the county of Shawano, in the Eastern District of the State of Wisconsin, it in good faith bought and purchased of one Dan Davids the amount of pine logs at board measure mentioned in the complaint herein, then and there of the value of six dollars per thousand feet board measure, and then and there at said place in the possession of said Dan Davids, who then and there claimed and represented himself to be the sole and absolute owner thereof, and entitled to sell the same and collect therefor for his own use and benefit, and this defendant purchased and bought said pine logs of him at said time and place in good faith and for value, believing him to be the bona fide and absolute owner thereof and entitled to sell the same and receive the proceeds thereof for his own use and benefit, and the defendant then and there paid him the said sum of six dollars per thousand feet board measure therefor, and that thereafter in the regular course of its business the defendants sold and disposed of said logs, and that, as this defendant is informed and believes, they are the same pine logs claimed by the plaintiff in its complaint herein to have been its property.

II.

And for a further and separate defense to the plaintiff's complaint the defendant corporation alleges and says, that long prior to the commencement of this action, and on or about the 10th day of April, 1901, it paid to the plaintiff the sum of two hundred and seventy-one dollars and thirty-seven cents ($271.37), in full satisfaction and accord of all and every of the claims of the plaintiff contained or set out in its complaint herein, which said payment was in money deposited by the
9 defendant in the National Bank of Oshkosh, a United States depository, to the credit of the Secretary of the Treasury of the United States, and in the manner and form provided by law, and that said money was received and accepted by the plaintiff and paid into the Treasury of the United States, and that the plaintiff has ever since retained the same and now has the same, and that the same was accepted by it in full satisfaction and accord and in final settlement of all sum or sums of money claimed to be due or owing from this defendant to the plaintiff on the cause or causes of action alleged in the complaint.

Wherefore, in consideration of the premises, the defendant demands judgment that the plaintiff take nothing by its said action, that its com-

plaint be dismissed on the merits, and that the defendant have judgment for its costs and disbursements herein.

THOMPSONS, HOLLISTER & PINKERTON,
Defendant's Attorneys.

STATE OF WISCONSIN,
Eastern District of Wisconsin, Winnebago County, ss:

A. B. Ideson, being first duly sworn, on oath deposes and says that he is an officer, to wit, the secretary of the defendant corporation, the Paine Lumber Company, Limited, sued herein as the Paine Lumber Company, and makes this verification in its behalf, as he is duly authorized to do; that he has read the above and foregoing answer, and knows the contents thereof, and that the same is true to his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true; that his knowledge and the grounds of his belief on the subject are derived from the writings, papers, vouchers, checks, and receipts in reference thereto now in his possession, and from reports and statements of the officers, agents, and attorneys of the defendant, made to him in the regular course of the business of the defendant, which reports and statements he believes to be true, and as well from facts within his own personal knowledge; that the reason why this verification is not made by the defendant itself is that the defendant is a corporation.

(Signed) A. B. IDESON.

Subscribed and sworn to before me this 29th day of March, A. D. 1902.

CHAS. NEVITT,
Notary Public, Wisconsin.

JUNE 21, 1904.

The stipulation of the parties as to facts filed as follows:

Stipulation.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

It is hereby stipulated and agreed by the parties hereto by their respective attorneys, that the following facts are admitted to be true for the purposes of this action, and the same may be offered in evidence by either party hereto as admitted and stipulated facts in the case for any and all purposes of this action.

Statement of facts.

That the timber and logs involved in this case, to wit, 7,500 feet of basswood, 6,500 feet of elm, 51,020 feet of pine, were cut in the winter of 1898–1899 from the east half of the northwest quarter of section No. thirty-five (35), in township No. twenty-eight (28) north, of range fourteen (14) east of the fourth principal meridian, and the northeast quarter

of the southwest quarter of section twenty-one (21) in said township;
that said land was a part of the eighteen (18) sections then and
11 now constituting the Stockbridge and Munsee Reservation. That
prior to said time and now there was and is what is commonly known and called a business committee of the headmen or councillors of said Stockbridge and Munsee Indians, and there was and is a party among them commonly called the Miller faction which denied the authority of such committee and opposed it. But that such committee represented a large majority numerically of the Stockbridge and Munsee Indians, as well as a large majority of its councillors or headmen, and that such committee had and has a chairman, a secretary, and three other members. That such business committee claiming authority and right so to do, allowed the different members of the tribe, being of age and heads of families, to select certain particularly described lands, and such selections were made, and the said committee did allot such selections to the parties making the same. That among the selections and allotments so made as aforesaid was one by and to one Thomas Gardner, a member of said tribe of Stockbridge and Munsee Indians, his selection and allotment being the east half of the northwest quarter of section thirty-five (35), township twenty-eight (28), range fourteen (14). That among the selections and allotments so made as aforesaid, was one by and to one Daniel Davids, a member of said tribe of Stockbridge and Munsee Indians, his selection and allotment being the northeast quarter of the southeast quarter of section twenty-one (21). And they each claimed the right to cut and dispose of the timber upon the said selections for any purpose and particularly for clearing purposes or for support of family, and the logs or timber hereinbefore referred to were by them cut from a part of their several selections under their claim thereto.

That the United States has never recognized such allotments as legal, although the said Stockbridge and Munsee Indians have insisted that the
same were legal and valid allotments of such land, and have
12 claimed that they were made in accordance with and under
authority of the said treaties and arrangements between them and the United States.

That the defendant, after the cutting of said logs and timber, the said basswood and elm logs then being on Weed's point in the county of Shawano, and off of said Indian lands, in good faith and for a valuable consideration purchased the same of said Thomas Gardner, he claiming then and there to be the owner thereof and entitled to dispose of the same; and after the cutting of said logs and timber purchased the said pine logs of said Daniel Davids in good faith and for a valuable consideration, he then and there claiming to be the owner thereof and entitled to sell the same.

It is further stipulated and agreed, that if the defendant, on the facts and law herein stipulated and proved on the trial of this action shall be held liable for the value of said logs and timber at the time of the taking thereof by it, or while the same are in its hands, that the sum of $566.28 shall be and hereby is fixed and agreed upon as the measure of damages therefor.

It is further stipulated and agreed that if the defendant, on the facts and law herein stipulated and proved on the trial of this action, shall be

held liable for the value of said logs and timber at the time of the cutting thereof by the said Indians, or the value thereof at the time of the taking thereof by the defendant, less the additions in value made thereto by the said Indians in cutting, hauling, and banking the same, that then and in that case the measure of damages therefor shall be and is hereby stipulated to be the sum of $379.59.

But such stipulation as to the measure of damages shall not affect
13 or prejudice the right of the defendant to show or claim credit for the payment of any and all sums of money which it may under the evidence prove have been paid to the plaintiff therefor or should be credited thereon.

(Signed) H. K. BUTTERFIELD,
U. S. Attorney,
THOMPSONS, REED & PINKERTON,
Attys. for Defendant.

And same day, additional stipulation of facts filed as follows:

Stipulation.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

It is hereby stipulated and agreed by the parties hereto by their respective attorneys, that the following additional facts, over and above the facts recited in the stipulation already filed herein, are admitted to be true for the purposes of this action, and that this stipulation may be filed herein and the same effect given thereto as if said facts had been specifically proved upon the trial of this action.

It is stipulated that the timber involved in this action was cut at the time alleged in the complaint, respectively, by Thomas Gardner upon the east half of the northwest quarter of section 35, in township No. 28, north of range 14 east, and of Daniel Davids upon the northeast quarter of the southwest quarter of section 21, in said township; that each of the said Gardner and Davids was at the time of such cutting an Indian and a member of the Stockbridge and Munsie tribe of Indians, and that such timber was cut by them respectively upon their respective selections, or pieces which they claimed as in the former stipulation
14 recited, upon said Stockbridge and Munsie Indian Reservation, not for the purpose of cultivation, but for the support of their families, and that they cut it claiming and believing that they had the right so to do; that said Davids had never resided upon his selection and there was no house thereon, but that he was there temporarily at times; that at the time of the cutting of the timber in question by said Gardner he was living upon his selection; that shortly thereafter his wife died, and that he has never lived upon his selection since, except at intervals of two or three months at a time; that this action was commenced by the

service of process upon the Paine Lumber Company on February 3, 1902; that on the 10th day of April, 1901, the defendant deposited to the credit of the Secretary of the Treasury, special account No. 5, $271.37 as an offer of settlement for the logs purchased from the Stockbridge and Munsie Indian Reservation, being the logs involved in this suit, and that such deposit and payment was made by the defendant in accordance with its offer to settle the matters involved in this case for such sum, to be then paid the Government of the United States in accordance with such offer, and that of such sum no part thereof has ever been returned to the defendant, though thereafter and on or about the 17th day of March, 1902, the Government, through its attorney in this case, sent to the attorney for the defendant herein Treasury warrant No. 684 for the sum of $271.37, being the same amount which had been sent by the defendant to the plaintiff, as hereinbefore stated, which amount the defendant then and there refused to accept; that the amounts specified as the measure of damages in the stipulation already filed herein include the costs of the Government in estimating the amount of the timber alleged to have been unlawfully cut upon said selections.

Dated this 21st day of June, 1904, Oshkosh, Wis.

(Signed) H. K. BUTTERFIELD,
United States Attorney, Plaintiff's Attorney.
THOMPSONS, REED & PINKERTON,
Defendant's Attorney.

15 JUNE 21, 1904.

This day came the parties by their counsel, Mr. H. K. Butterfield, district attorney, appearing for the plaintiff, and Mr. John Thompson for the defendant, and the issue herein came on to be tried, when the parties entered into a stipulation in writing, waiving a jury, as herein filed, to wit: "In the Circuit Court of the United States for the Eastern District of Wisconsin. The United States of America, plaintiff, vs. Paine Lumber Company, defendant. It is hereby stipulated and agreed that a trial by jury in the above-entitled action be, and the same hereby is, waived. And it is further stipulated and agreed that this action may be tried by the court without a jury. Dated this 21st day of June, A. D. 1904. H. K. Butterfield, U. S. atty., attorney for the plaintiff. Thompsons, Reed and Pinkerton, attorneys for the defendant." And thereupon the said issue was tried by the court and submitted, when the court took the same under consideration.

And now at this same term, to wit, October term, 1904, and on the eighth day thereof, to wit, on the 13th day of October, A. D. 1904, the following proceedings were had, to wit:

16 THE UNITED STATES OF AMERICA
vs.
THE PAINE LUMBER COMPANY, LTD. } At law.

This day came the district attorney, Mr. H. K. Butterfield, and the defendant by its counsel, Messrs. Thompsons, Reed & Pinkerton, and this cause having been heretofore tried by the court pursuant to a stipulation of the parties waiving a jury, on consideration of the pleadings

and evidence submitted, and the arguments of counsel thereon, the court doth find the issue herein in favor of the defendant pursuant to findings of fact and conclusions of law herein filed.

Whereupon it is considered and adjudged by this court now here that the United States of America, plaintiff, take nothing by its writ, and that its complaint herein be and the same is hereby dismissed upon the merits without costs.

Judgment roll filed October 13th, A. D. 1904.

(Signed) EDWARD KURTZ, *Clerk.*

And which findings of fact and conclusions of law are as follows:

Findings of fact and conclusions of law.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

The issues raised by the pleadings in this action having regularly come on for trial at the June term, 1904, of the above-named court
17 held at the city of Oshkosh, in the said Eastern District of Wisconsin, and on the 21st day of June, 1904, in said term, and a trial by jury having been waived by written consent of the parties by their respective attorneys, filed with the clerk and assented to by the court, and a trial of said issues having been regularly and duly had by the court, the Hon. H. K. Butterfield, United States district attorney, appearing for the plaintiff, and Messrs. Thompsons, Reed & Pinkerton appearing for the defendant, and the court having heard the testimony and evidence offered by the respective parties and the stipulations as to certain facts filed herein, and the court having taken the matter under advisement and being now fully advised herein, finds and decides as follows:

FINDINGS OF FACT.

1.

That the defendant is and was during all the times mentioned in the complaint a duly incorporated Wisconsin corporation.

2.

That long prior to the commencement of this action and long prior to the acts alleged in the complaint the head men or council of the Stockbridge and Munsee Indians, claiming authority so to do under the treaties and arrangements with the United States, allotted to one Thomas Gardner, the east half of the northwest quarter of section thirty-five (35), township twenty-eight (28), range fourteen (14) east, of the fourth principal meridian, of the State of Wisconsin, and to one Daniel Davids the

northeast quarter of the southeast quarter of section twenty-one (21), township twenty-eight (28), range fourteen (14) east, of the fourth principal meridian, of the State of Wisconsin, said lands being a part of the tract of land given to the Stockbridge and Munsee Indians by the treaty of 1856, each of said Indians being a member of said tribe of Stock-
18 bridge and Munsee Indians and the head of a family, and the said allotments being made to them respectively as their separate and individual allotments and being the same lands described in the complaint herein.

3.

That thereupon Thomas Gardner and Daniel Davids entered into immediate possession of their respective allotments and each of them has ever since claimed to hold the same as his allotment and has constantly asserted his ownership and right to take the timber therefrom without restrictions under the said treaty and arrangements with the plaintiff.

4.

That no patent has ever been issued for either of said parcels of land and that the ownership of the same by said Indians has received no official sanction on the part of the plaintiff aside from the recognition of their respective rights to the occupancy of the parcels so claimed and held by them respectively as aforesaid.

And that their respective rights to the occupancy of their respective parcels of land allotted to them as aforesaid has been recognized by the United States.

5.

That the timber and logs involved in this case, to wit, 7,500 feet of basswood, 6,500 of elm, and 51,020 feet of pine, were cut in the winter of 1898–1899, upon said respective parcels of land, by the said Thomas Gardner and the said Daniel Davids, respectively, not for the purpose of clearing the land for cultivation, but for the purpose of providing means for the support of their families, and that such cutting by each of them was done in good faith, and each of them claiming and believing that he had the right to so cut for said purpose.

19 6.

That after said cutting, and in the summer of 1899, at Weed's Point, in the county of Shawano, Wisconsin, the said logs were bought by the defendant of said Thomas Gardner and Daniel Davids, the same then and there being at said Weed's Point and off of the said reservation, for a valuable and fair consideration.

7.

That the defendant bought the same in good faith, believing the said Thomas Gardner and the said Daniel Davids were the bona fide and absolute owners thereof, and that they respectively were lawfully entitled to sell the logs cut from their respective allotments.

8.

That at the time of the cutting of the timber in question the said Thomas Gardner was living upon his said allotment; that shortly thereafter his wife died, and that he has not since lived thereon except at intervals of two or three months at a time, but for the most part has lived elsewhere with his brother.

9.

That at the time of said cutting the said Daniel Davids had no house on his allotment and was only there at times temporarily.

10.

It is stipulated in this case that if defendant is liable for the value of the logs and timber at the time of taking or while in his hands that the measure of damages therefor be the sum of five hundred and sixty-six dollars and twenty-eight cents ($566.28), and that if it be liable for the value of said logs and timber at the time of the cutting thereof or at the time of the taking thereof by the defendant, less the additions in value made thereto by the Indians in cutting, hauling, and banking the same, then the measure of damages therefor shall be the sum of three hundred and seventy-eight dollars and fifty-nine cents ($378.59). The measure of damages in both cases includes the cost of the scale and estimate thereof made by the Government officials.

CONCLUSIONS OF LAW.

That the said Thomas Gardner and the said Daniel Davids, as such allottees, had the right to cut and sell the timber on their respective allotments for the purpose for which the same was cut and sold, and that the defendant is entitled to judgment herein in its favor and against the plaintiff, dismissing the plaintiff's complaint on the merits, but without costs.

Let judgment be entered accordingly.

(Signed) WM. H. SEAMAN, *Judge.*

October 13, 1904.

OCTOBER 18, 1904.

This day came the United States attorney and filed exceptions to the conclusions of law, as follows:

Exceptions to conclusions of law.

In the Circuit Court of the United Satets of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

And now comes the above-named plaintiff, the United States of America, by H. K. Butterfield, United States attorney, its attorney, and

makes and files these its exceptions to the court's conclusions of law made in said action and dated October 13, 1904, and filed herein:

First. The plaintiff excepts to the said entire conclusion of law,
21 for the reason that said conclusion of law is an erroneous conclusion of law upon the facts as found by the court, and is not warranted by the facts as found, and that the same is contrary to law.

Second. It specifically excepts to that part of the conclusion of law which reads as follows: That the said Thomas Gardner and the said Daniel Davids, as such allottees, had the right to cut and sell the timber on their respective allotments for the purpose for which the same was cut and sold," for the reason that said conclusion of law is contrary to law and not warranted by the facts as found.

Third. To that part of the conclusion of law which is that the defendant is entitled to judgment herein in its favor and against the plaintiff, dismissing the plaintiff's complaint on the merits, for the reason that the same is contrary to law, is not sustained by the facts and is an erroneous conclusion of law upon the facts as found.

Fourth. The plaintiff specifically excepts to the order of the court ordering judgment in favor of the defendant in said action, as such order is contrary to law and to the facts as found.

Fifth. It specifically excepts to the failure of the court to find that the plaintiff is entitled to judgment against the defendant for the value of the timber as found by the findings of fact, with costs, and to the court's failure to order such judgment.

Sixth. It specifically excepts to the court's failure to find as a conclusion of law upon the facts as found that the allottees, Thomas Gardner and Daniel Davids, had no right to cut and sell the timber on their respective allotments for the purpose for which the same was cut and sold, as set forth in the findings of fact, and that the defendant company acquired no title to the timber purchased by it from the said allottees, and that the said defendant company is liable to the plaintiff for the value of such timber, as found in the findings of fact, at the
22 time it was purchased by the said company from the said allottees, Thomas Gardner and Daniel Davids, with costs.

Seventh. It specifically assigns as error the entire conclusion of law as made by the court and further specifically assigns as error the failure of the court to find as a conclusion of law that the said allottees had no right to cut the timber for the purposes as found and had no right to sell the same, and for its failure to find that the defendant company by its purchase of said timber acquired no legal title thereto, and for the court's failure to find as conclusion of law that the defendant is indebted to the plaintiff for the value of the timber, as found by the findings of fact, together with costs, and for its failure to order judgment in favor of the plaintiff and against the defendant for the value of the timber, as found, with the costs.

Dated October 17, 1904.

(Signed) H. K. BUTTERFIELD,
United States Attorney, Plaintiff's Attorney.

23 *Opinion of the court.*

United States Circuit Court, Eastern District of Wisconsin.

UNITED STATES
vs.
TORREY CEDAR COMPANY.

UNITED STATES
vs.
PAINE LUMBER COMPANY.

August 8, 1904.

At law. Suits in trover to recover the value of timber cut for sale and sold by the Indian occupant from his alleged allotment in the Stockbridge and Munsie Reservation and purchased in good faith by the defendants, respectively. Trial before the court on stipulations waiving a jury.

H. K. Butterfield, U. S. attorney, for prosecution; Thompsons, Reed & Pinkerton, for the defendants.

SEAMAN, Judge.

The primary issue in these suits is whether the Indian allottees under the Stockbridge and Munsie treaty of 1856 (11 Stat., 663) and the act of Congress of 1871 (16 Stat., 404) were vested with sufficient title in their allotments to authorize the cutting of timber, for sale and not by way of improvements, without the approval of the Department of the Interior. The selection of the eighty-acre tracts by the several members in question under the treaty, and exclusive occupancy, each formally approved by the council of the tribe, are conceded facts; and while the Department has granted no certificate or patent thereupon and has not formally recognized the validity of the allotments, it has constantly recognized and protected the exclusive possession of each. As the allottees have complied with all the requirements on their part
24 for obtaining the allotment under the treaty, it is not deemed questionable that they are entitled to recognition as allottees, with all the rights intended by the treaty, pending the issue of a patent. The treaty granted the allotments to be located, and the certificate is mere evidence of authorized location, so that operation of the grant is presumptive. Best v. Polk, 18 Wall., 112, 118. The acts of August 15, 1894 (28 Stat., 30, vol. 2 Supp., p. 246), and February 6, 1901 (31 Stat., 760), appear to be applicable in such instances to authorize an action establishing their rights under the treaty. Hy-Yu-Tse-Mil-Kin v. Smith (C. C. A.), 119 Fed., 114; Sloan v. U. S., 118 Fed., 283.

The contention on behalf of the Government is that the case is in any view within the decision in U. S. v. Cook, 19 Wall., 591, wherein "the right of the Indian in the land" was defined as "that of occupancy alone," with the fee in the United States, so that cutting the timber beyond the needs for improving the land "would be waste and unauthorized." On the other hand, the allottees have constantly asserted ownership and right to take the timber without restriction under the treaty. The controversy thereupon is of long standing and is now presented for judicial determi-

nation in various criminal and civil actions. Tested alone by the doctrine upheld in United States v. Cook, supra, the theory of the prosecution is not well founded, as the title there involved is plainly distinguishable from that intended by the Stockbridge and Munsie treaty. That case arose under the Oneida treaty of 1838 (7 Stat., 566) growing out of the prior Menominee treaties, whereby the present Oneida Reservation was created, and by its express terms was "reserved to the said Indians to be held as other Indian lands are held"—merely a right of occupancy, as uniformly held in conformity with the early ruling in Johnson v. McIntosh, 8 Wheat., 574.

25 In the case at bar, however, it is manifest that no such limitation was made or intended. The Stockbridge and Munsie treaty of 1856 was entered into to provide for relocation of the remnant of the tribe in Wisconsin, as they were unwilling to remove to a reservation in Minnesota theretofore provided. It recites valuable retrocessions and releases to the United States and reserves a tract "near the south boundary of the Menominee Reservation" of sufficient extent to furnish individual allotments. The terms of the grant were substantially these: After survey into the usual subdivisions the council of the tribes, under the direction of the superintendent, shall "make a fair and just allotment among the individuals and families of their tribes," in eighty-acre tracts to heads of families and other classes named, and forty acres to others. The allottees "may take immediate possession thereof, and the United States will thenceforth and until the issuing 'of patents' hold the same in trust for such persons;" certificates are to be issued "securing to the holders their possession and an ultimate title to the land;" but "such certificates shall not be assignable, and shall contain a clause expressly prohibiting the sale or transfer by the holder" of such land. After ten years, upon application of the holder and consent of the council, "and when it shall appear prudent and for his or her welfare, the President of the United States may direct that such restriction on the power of sale shall be withdrawn and a patent issued in the usual form." In the event of the death of an allottee without heirs, before patent, the allotment was not to revert to the United States, but to the tribe for disposition by the council. It is further declared (art. 11): "The object of this instrument being to advance the welfare and improvement of said Indians, it is agreed, if it prove insufficient, from causes that can not now be foreseen, to effect these ends, then the President of the United States

26 may, by and with the advice and consent of the Senate, adopt such policy in the management of their affairs, as in his judgment may be most beneficial to them; or Congress may, hereafter, make such provisions of law as experience shall prove necessary."

Under the terms of this treaty the policy of earlier treaties to reserve to the Indians "to be held as other Indian lands are held"—a mere right of occupancy—was changed to intend an ultimate title in fee simple. Pending the patent, while the legal title is in the United States, the allottee was vested with the equitable title contemplated by the treaty (Crews v. Burcham, 1 Black, 352, 356), unless modified by act of Congress, or by concurrent action of the President and Senate, if therein subject to modification. The provision in restraint of alienation meantime "is not inconsistent with a fee simple estate." Libby v. Cark, 118

U. S., 250, 255. Assuming, as suggested in the argument (but not so ruling), that the provision for title to go to the tribe in default of heirs would turn it into a base or qualified fee, the allottee living "has the same rights and privileges over his estate as if it were a fee simple" (11 Am. & Eng. Ency. of Law, 2 ed., 369, and citations) and is not liable for waste. (Id. 374.) See U. S. v. Reese, 5 Dill., 405, F. C., 16137.

In 1871 an act of Congress (16 Stat., 404) provides for the sale of the lands of this reservation, excepting eighteen sections which were reserved for the allottees, and the tracts involved in these suits are within the portion so reserved. This act expressly recognized the rights of allottees under the treaty, declared the "lands assigned and allotted to be held inalienable" and on "reversion to become the common property of the tribe," and that the title be held by the United States until patent issues "in trust for the individuals and their heirs to whom
27 the same were allotted." A prior act of 1865 (13 Stat., 562) authorized homestead entries and applications for citizenship by members of this tribe, but does not touch the present inquiry, and no other Congressional action appears in reference to the reservation or allotments therein.

I am of opinion, therefore, that the title derived under the treaty and confirmed by the act of Congress is sufficient to authorize the cutting of timber for sale, unless restricted by other provisions of law applicable thereto, and that these cases are not within the doctrine of United States v. Cook, supra. See New York Indians v. U. S., 170 U. S., 1, and Jones v. Meehan, 175 U. S., 1, 21, as to effect of the treaty. In this view, however, another question arises, which impresses me as important and not free from difficulty, namely, whether the treaty right of these Indians is subject to restriction and is restricted by the general policy and legislation in respect of Indians on reservations.

The paternal policy of the Government over the Indians has been constantly exercised, and in so far as it is directed by Congress for their protection and control the questions arising thereunder "are beyond the sphere of judicial cognizance, and must be met by the political department" even though the terms of a treaty are thereby superseded. Thomas v. Gay, 169 U. S., 264, 271; Stephens v. Cherokee Nation 174, U. S., 445, 483; Lone Wolf v. Hitchcock, 187 U. S., 553, 566. In Lone Wolf v. Hitchcock, supra, the authorities are reviewed and the doctrine stated that Indians who have not "been fully emancipated from the control and protection of the United States are subject, at least so far as tribal lands are concerned, to be controlled by direct legislation of Congress." So it has been held that neither allotment nor citizenship relieves the Indian from restraint against alienation, and his lease or contract to surrender possession to a white man is inoperative.
28 (Eells v. Ross, 29 U. S. App., 59; Beck v. Flournoy Live Stock Co., 27 U. S. App., 618). Also, that the act of 1897 (29 Stat., 506), prohibiting sale of liquor to allottees while their land is held in trust by the Government, or they are under charge of an agent, is authorized under the constitutional power to regulate commerce with the Indian tribes and is applicable to a citizen allottee. Farrel v. United States (C. C. A.), 110 Fed., 942, 946. Whether the legislative power extends as well to the inhibition or restriction of these allottees in cutting timber

upon their allotments under the treaty is an inquiry not involved in these cases, unless such legislation appears. None is cited on the briefs, aside from section 5388 as amended in 1888 (sec. 5388, 3 U. S. Comp. Stat.), and I am satisfied that the general terms of this provision are not applicable to such allottees without other provisions to make the severance of timber unlawful. In reservations or allotments therein where the fee is in the United States and the Indians have right of occupancy only their cutting of timber for sale is waste and unlawful per se (U. S. v. Cook, supra; Pine River Logging Co. v. U. S., 186 U. S., 279, 284), so that the statute applies; but, as above indicated, the title of these allottees confers fee simple rights, and is not within such rule. Surely they are not guilty of "unlawfully cutting" their timber unless prohibited by some other statute. I have examined numerous provisions relating to the reservations and to the executive departments, and found no enactment which seems to authorize such interpretation. In Pine River Logging Co. v. United States, supra, a statute (25 Stat., 673) was considered, which provides that the President may authorize "the Indians residing on reservations or allotments, the fee to which remains in the United States," to cut and sell "dead timber standing or fallen" for their sole benefit. Thus authorized, the Indians made contracts with
29 the defendants limited "to dead and down timber" of quantities specified, but the limitations were disregarded both by the parties and by agents for the Government, and the contractors obtained timber greatly in excess (including green timber), paying, however, the contract prices. They were justly held liable to the Government for the excess as wilful trespassers. But neither that case nor the statute referred to are applicable to the case at bar. Both are predicated on the fact that the fee was in the United States, with "a right of occupancy" only in the Indians, and the opinion (pp. 284, 290) rests liability upon such conceded fact.

No statutory inhibition appearing, I am of opinion that the terms of the treaty control the issue; that the cutting of timber was within the rights of the allottees; and that the defendants, purchasing and paying therefor in good faith, without overreaching in any manner, and free from complicity or knowledge of any dispute as to title, are not answerable to the United States for the value. If any regulation of the executive department could have force by way of restriction, under the general authority of Congress, no such regulation is brought to my attention; and without intimating a ruling as to the power (either delegated or inherent) it may well be remarked that no regulation can be thus operative in any view against these allotments which is directed and predicated on the theory that the allottees have a right of occupancy alone.

The only precedent cited which impresses me as bearing on this inquiry is an opinion by Attorney-General Garland (19 Op. of Attorney-General, 232) in reference to the rights of allottees under the act of February 8, 1887 (24 Stat., 388), which is not without force as applicable to the allotments in question. The act referred to adopts a policy of allotments with analogous provision as to title, the United States holding "the land
30 thus allotted for the period of twenty-five years in trust for the sole use and benefit of the" allottee and his heirs, and then to be conveyed in fee unless the President extends the period; and any conveyance or "any contract made touching the same" before the expiration

of that time "shall be absolutely null and void." The opinion rules under the general policy that the trusteeship therein provided "is substituted for the guardianship heretofore exercised over the tribe" and intends that "no unlawful waste be committed either by the cestui que trust or any one else," so that "the allottee does not possess the right to cut and sell merchantable timber," but is subject to the doctrine of United States v. Cook, supra. An opinion from such source is strongly persuasive, and I have hesitated to depart from its reasoning and conclusions, but find no escape from the conflicting view above stated. Conceding that control and protection of the allottees were contemplated under the treaty and that with or without restraint in the cutting of timber the Government as trustee could protect them against imposition or fraud and prevent strangers from entering and cutting timber under purported contracts, it is quite another proposition to sustain a suit on the part of the Government to recover the value of timber purchased from the allottee in good faith, for which a fair price was paid. The interest of the Government would authorize recovery only for the benefit of the cestui que trust, and as the latter has suffered no injury in person or estate through the mere fact of purchase, no rule of law is suggested or known to me which would sanction such recovery under the conceded facts in these cases.

Findings will be prepared and submitted accordingly in favor of the defendants.

31 JULY 27, 1905.

This day came the district attorney and filed his assignment of error and petition for writ of error, which are as follows:

Assignments of error.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

Comes now the plaintiff in the above entitled action, and makes and files the following assignments of error upon which it will rely in its prosecution of the writ of error in the above entitled cause.

One.

That the United States Circuit Court in and for the Eastern District of Wisconsin erred:

In finding and deciding upon the facts as found, as a conclusion and matter of law, that Thomas Gardner and Daniel Davids, as allottees, as found in the second finding of fact made and filed herein, had the right to cut and sell the timber on their respective allotments for the purposes for which the same were cut and sold (such purposes being as defined in the fifth finding of fact, namely, not for the purpose of clearing the land for cultivation, but for the purpose of providing means for the support of their families.

Two.

That the said court erred:

In finding and deciding upon the facts as found, as a conclusion and matter of law, that the defendant is entitled to judgment
32 herein in its favor, and against the plaintiff, and dismissing the plaintiff's complaint on the merits.

Three.

That the said court erred:

Upon the facts as found, in ordering judgment to be entered in favor of the defendant dismissing the complaint upon its merits.

Four.

That the said court erred:

Upon the facts as found, in not finding and deciding as a conclusion and matter of law that the allottees, Thomas Gardner and Daniel Davids, had no right to cut and sell the timber on their respective allotments for the purpose for which the same was cut and sold, as found by the court in its findings of fact, and that the defendant company acquired no title to the timber purchased by it from them, and that the defendant is liable to the plaintiff for the value of the timber, as found in the tenth finding of fact, at the time it was purchased by the said company, to wit, in the sum of $566.28, together with interest thereon and costs.

Five.

That the said court erred:

Upon the facts as found, in not finding and deciding as a conclusion and matter of law that the said allottees, Thomas Gardner and Daniel Davids, had no right to cut the timber for the purposes as found, and had no right to sell the same.

Six.

That the said court erred:

Upon the facts as found, in not finding and deciding as a conclusion and matter of law that the defendant by its purchase of the timber, as found by the findings of fact, acquired no legal title thereto.

33 Seven.

That the said court erred:

Upon the facts as found, in not finding and deciding as a conclusion and matter of law that the defendant is indebted to the plaintiff for the value of the timber as found, to wit, $566.28, being the value at the time of the said defendant's purchase, together with interest thereon and costs.

Eight.

That the said court erred:

Upon the facts as found, in not finding and deciding as a conclusion and matter of law that the plaintiff is entitled to judgment in its favor against the defendant for the said value of the timber at the time of its purchase by the defendant as found, to wit, the sum of $566.28, together with interest and costs.

Nine.

That the court erred:

In not ordering upon the findings of fact judgment for the plaintiff and against the defendant for the value of the timber at the time of its purchase by the defendant as found in the sum of $566.28, together with interest upon said amount, with costs.

Ten.

That said judgment is contrary to law, and contrary to the facts as found in the findings of fact.

Wherefore the plaintiff, this plaintiff in error, prays that the judgment of the said court be reversed, and that directions be given ordering judgment for the plaintiff herein against the defendant
34 for the value of the timber at the time of its purchase by the defendant, as found in the findings of fact, namely, the sum of $566.28, together with interest thereon and costs.

(Signed) H. K. BUTTERFIELD,
United States Attorney,
Attorney for the Plaintiff and Plaintiff in Error.

Dated July 27, 1905.

Petition for writ of error.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

The plaintiff in the above-entitled case, the United States of America, feeling itself aggrieved by the court's conclusion of law made and filed in said action, and the judgment entered therein on the 13th day of October, A. D. 1904, comes now by H. K. Butterfield, United States attorney for the said district, and petitions said court for an order allowing said plaintiff to prosecute a writ of error to the honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided.

And your petitioner will ever pray.

(Signed) H. K. BUTTERFIELD,
United States Attorney for the Eastern District of Wisconsin.

Dated July 27, 1905.

35 *Order allowing writ of error.*

At the July special term, A. D. 1905, of the Circuit Court of the United States of America of the Seventh Judicial Circuit in and for the Eastern District of Wisconsin, held at the court room, in the city of Milwaukee, Wisconsin, on the 27th day of July, in the year of our Lord one thousand nine hundred and five.

Present: The Honorable William H. Seaman, circuit judge.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

Upon motion of H. K. Butterfield, United States attorney for the Eastern District of Wisconsin, and upon filing a petition for a writ of error, and the assignment of errors,

It is ordered, that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States of America the judgment heretofore entered herein, without bond therefor.

By the court.

(Signed) WM. H. SEAMAN,
Circuit Judge.

Dated July 27, 1905.

And same day præcipe of district attorney to issue writ of error filed as follows:

Præcipe.

In the Circuit Court of the United States of America for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE PAINE LUMBER COMPANY, DEFENDANT.

Let a writ of error issue for the removal of the above-entitled cause to the Supreme Court of the United States, and upon issuing of such writ let the proper transcript be made and returned and the proper citation issue.

(Signed) H. K. BUTTERFIELD,
United States Attorney.

To EDWARD KURTZ, Esq., *Clerk.*

Dated July 27, 1905.

36 Whereupon a writ of error and citation issued returnable in thirty days and a copy of said writ of error lodged, in pursuance of the statutes in such made and provided, for the defendant in error.

37 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the foregoing with their originals now on file and of record in my office, and that the same is a true and correct copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case of The United States of America vs. The Paine Lumber Company.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this 7th day of August, in the year of our Lord one thousand nine hundred and five and of the independence of the United States the 130th.

[SEAL.] EDWARD KURTZ, *Clerk.*

38 UNITED STATES OF AMERICA, ss.

The President of the United States to the honorable the judges of the Circuit Court of the United States of America for the Eastern District of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of the United States of America for the Eastern District of Wisconsin, before you, or some of you, between The United States of America, plaintiff and plaintiff in error, against The Paine Lumber Company, defendant and defendant in error, a manifest error hath happened, to the great damage of the said plaintiff, The United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the
39 United States, the 27th day of July, in the year of our Lord one thousand nine hundred and five.

[SEAL.] EDWARD KURTZ,
Clerk of the Circuit Court of the United States for the Eastern District of Wisconsin.

(Indorsed:) In the Circuit Court of the United States of America for the Eastern District of Wisconsin, The United States of America, plff. & plff. in error, vs. The Paine Lumber Company, dft. & dft. in error. Writ of error. Filed July 27, 1905. Edward Kurtz, clerk.

40 (Original.)

UNITED STATES OF AMERICA, ss.

To the Paine Lumber Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States of America for the Eastern District of Wisconsin, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William H. Seaman, judge of the Circuit Court of the United States for the said district, this 27th day of July, in the year of our Lord one thousand nine hundred and five.

WILLIAM H. SEAMAN,
Circuit Judge.

We accept service of this citation this 8 day of August, A. D. 1905.

THOMPSONS, REED & PINKERTON,
Attorneys for the Paine Lumber Company.

41 (Indorsed:) In the Circuit Court of the United States of America for the Eastern District of Wisconsin, The United States of America, plff. & plff. in error, vs. The Paine Lumber Company, deft. and deft. in error. Citation.

(Indorsement on cover:) File No. 19877. E. Wisconsin, C. C. U. S. Term No., 375. The United States, plaintiff in error, vs. The Paine Lumber Company. Filed August 18th, 1905. File No. 19877.

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